

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

EMBLEM ASSOCIATES, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	PSC DOCKET NO. 16-0008
	)	
ARTESIAN WATER COMPANY, INC.	)	
	)	
Respondent.	)	
	)	

**DELAWARE PUBLIC SERVICE COMMISSION STAFF’S  
BRIEF CONCERNING THE BURDEN OF PROOF**

In response to the Hearing Examiner’s invitation for briefing, made during the May 23, 2016 pre-hearing conference call in the above-captioned proceeding, regarding which party bears the burden of proof, the Delaware Public Service Commission (“Commission”) Staff (“Staff”) files this brief in support of the position of Respondent Artesian Water Company, Inc. (“Artesian”). Under the applicable statutes and regulations, Complainant Emblem Associates, LLC (“Emblem”), not Artesian, bears the burden of proof in this complaint docket which Emblem has initiated.

**I. 26 Del. Admin. C. § 2.12.3 applies and places the burden of proof upon the “moving party,” Emblem.**

Commission regulation 26 Del. Admin. C. § 2.12.3, which governs this proceeding, states that the “burden of proof shall be on the moving party, except where placed on another party by law or Commission order.” Here, the moving party is Emblem, because Emblem has initiated this proceeding by filing a formal complaint with the Commission. Thus, Emblem bears the burden of proof.

No Commission order exists that has shifted Emblem’s burden of proof to another party.

Furthermore, no law exists that has shifted Emblem's burden of proof to another party. In particular, 26 *Del. C.* §§ 307(a) and (b), which will be discussed below, is inapplicable to this proceeding, and thus does not shift Emblem's burden of proof to Artesian.

## **II. 26 *Del. C.* §§ 307(a) and (b) do not apply in the instant proceeding.**

The Hearing Examiner has questioned whether 26 *Del. C.* §§ 307(a) and (b) ("Section 307") shifts Emblem's burden of proof to Artesian. It does not, as Section 307 is inapplicable in the instant proceeding. Section 307 applies, as the title of Subchapter III states, to "Rates." Emblem, in its complaint, seeks relief from the imposition of a "Contribution In-aid-of Construction" ("CIAC") charge, which is not a "rate," under the Commission's governing statutes and regulations. Although not defined by Delaware law, "rate" is a term of art that encompasses the prospective and generally applicable prices that a utility collects for its services. In contrast – and indeed central to the dispute here – is the CIAC "charge" that has been assessed to Emblem for infrastructure costs related to its specific development project. *See 26 Del. Admin. C.* § 3.8.1. Thus, Section 307(a) does not apply here.

Section 307(b), which does address "charges," applies only when the Commission initiates the dispute regarding the utility's charge or credit. As noted, Emblem, not the Commission nor Staff, has initiated this dispute. Thus, Section 307(b) does not apply to this proceeding to shift Emblem's burden of proof.

Respectfully,

/s/ Brenda R. Mayrack

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